

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 164**

Introduced by Cornett, 45.

Read first time January 12, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 2-5413 and 81-12,125, Reissue Revised Statutes of  
3 Nebraska, and sections 77-27,187.02, 77-5714, 77-5715,  
4 77-5723, 77-5725, 77-5726, 77-5727, 77-5804, 77-5806,  
5 77-5905, and 77-5906, Revised Statutes Cumulative  
6 Supplement, 2008; to change economic development tax  
7 incentive provisions; to provide operative dates; and to  
8 repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 2-5413, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           2-5413 Sections 2-5413 to 2-5424 shall be known and  
4 may be cited as the Agricultural Opportunities and Value-Added  
5 Partnerships Act. The act terminates on January 1, ~~2011~~, 2015.

6           Sec. 2. Section 77-27,187.02, Revised Statutes Cumulative  
7 Supplement, 2008, is amended to read:

8           77-27,187.02 (1) To earn the incentives set forth in the  
9 Nebraska Advantage Rural Development Act, the taxpayer shall file  
10 an application for an agreement with the Tax Commissioner.

11           (2) The application shall contain:

12           (a) A written statement describing the full expected  
13 employment or type of livestock production and the investment  
14 amount for a qualified business, as described in section 77-27,189,  
15 in this state;

16           (b) Sufficient documents, plans, and specifications as  
17 required by the Tax Commissioner to support the plan and to define  
18 a project; and

19           (c) An application fee of five hundred dollars. The fee  
20 shall be remitted to the State Treasurer for credit to the Nebraska  
21 Incentives Fund. The application and all supporting information  
22 shall be confidential except for the name of the taxpayer, the  
23 location of the project, and the amounts of increased employment or  
24 investment.

25           (3) (a) The Tax Commissioner shall approve the application

1 and authorize the total amount of credits expected to be earned as  
2 a result of the project if he or she is satisfied that the plan in  
3 the application defines a project that (i) meets the requirements  
4 established in section 77-27,188 and such requirements will be  
5 reached within the required time period and (ii) for projects other  
6 than livestock modernization or expansion projects, is located in  
7 an eligible county, city, or village.

8 (b) The Tax Commissioner shall not approve further  
9 applications once the expected credits from the approved projects  
10 total two million five hundred thousand dollars in each of fiscal  
11 years 2004-05 and 2005-06, three million dollars in each of fiscal  
12 years 2006-07 through 2008-09, and four million dollars in fiscal  
13 year 2009-10. For applications filed in calendar year 2010 and  
14 each calendar year thereafter, the Tax Commissioner shall not  
15 approve further applications once the expected credits from the  
16 approved projects total four million dollars. and each fiseal  
17 year thereafter. Four hundred dollars of the application fee shall  
18 be refunded to the applicant if the application is not approved  
19 because the expected credits from approved projects exceed such  
20 amounts.

21 (c) Applications for benefits shall be considered in the  
22 order in which they are received.

23 (d) Applications shall be filed by November 1 and shall  
24 be complete by December 1 of each calendar year. Any application  
25 that is filed after November 1 or that is not complete on December

1 1 shall be considered to be filed during the following calendar  
2 year.

3 (4) After approval, the taxpayer and the Tax Commissioner  
4 shall enter into a written agreement. The taxpayer shall agree  
5 to complete the project, and the Tax Commissioner, on behalf of  
6 the State of Nebraska, shall designate the approved plans of the  
7 taxpayer as a project and, in consideration of the taxpayer's  
8 agreement, agree to allow the taxpayer to use the incentives  
9 contained in the Nebraska Advantage Rural Development Act up to  
10 the total amount that were authorized by the Tax Commissioner  
11 at the time of approval. The application, and all supporting  
12 documentation, to the extent approved, shall be considered a part  
13 of the agreement. The agreement shall state:

14 (a) The levels of employment and investment required by  
15 the act for the project;

16 (b) The time period under the act in which the required  
17 level must be met;

18 (c) The documentation the taxpayer will need to supply  
19 when claiming an incentive under the act;

20 (d) The date the application was filed; and

21 (e) The maximum amount of credits authorized.

22 Sec. 3. Section 77-5714, Revised Statutes Cumulative  
23 Supplement, 2008, is amended to read:

24 77-5714 (1) Number of new employees, for a tier 1, tier  
25 2, tier 3, or tier 4 project, means the number of equivalent

1 employees that are employed at the project during a year that are  
2 in excess of the number of equivalent employees during the base  
3 year, not to exceed the number of equivalent employees employed at  
4 the project during a year who are not base-year employees and who  
5 are paid wages at a rate equal to at least sixty percent of the  
6 Nebraska average weekly wage for the year of application.

7 (2) Number of new employees, for a tier 6 project, means  
8 the number of equivalent employees that are employed at the project  
9 during a year that are in excess of the number of equivalent  
10 employees during the base year, not to exceed the number of  
11 equivalent employees employed at the project during a year who are  
12 not base-year employees and who are paid at a rate equal to or  
13 greater than the tier 6 weekly required compensation for the year  
14 of application.

15 (3) Teleworkers working for wages or salaries in Nebraska  
16 from their residences for a taxpayer on tasks interdependent with  
17 the work performed at the project shall be considered to be  
18 employed at the project.

19 (4) Employees who work at a military installation in  
20 Nebraska for a taxpayer on tasks interdependent with the work  
21 performed at the project shall be considered to be employed at the  
22 project.

23 Sec. 4. Section 77-5715, Revised Statutes Cumulative  
24 Supplement, 2008, is amended to read:

25 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5

1 project, qualified business means any business engaged in:

2 (a) The conducting of research, development, or testing  
3 for scientific, agricultural, animal husbandry, food product, or  
4 industrial purposes;

5 (b) The performance of data processing,  
6 telecommunication, insurance, or financial services. For purposes  
7 of this subdivision, financial services includes only financial  
8 services provided by any financial institution subject to tax  
9 under Chapter 77, article 38, or any person or entity licensed by  
10 the Department of Banking and Finance or the federal Securities  
11 and Exchange Commission and telecommunication services includes  
12 community antenna television service, Internet access, satellite  
13 ground station, data center, call center, or telemarketing;

14 (c) The assembly, fabrication, manufacture, or processing  
15 of tangible personal property;

16 (d) The administrative management of the taxpayer's  
17 activities, including headquarter facilities relating to such  
18 activities or the administrative management of any of the  
19 activities of any business entity or entities in which the taxpayer  
20 or a group of its shareholders holds any direct or indirect  
21 ownership interest of at least ten percent, including headquarter  
22 facilities relating to such activities;

23 (e) The storage, warehousing, distribution,  
24 transportation, or sale of tangible personal property;

25 (f) The sale of tangible personal property if the

1 taxpayer derives at least seventy-five percent or more of the  
2 sales or revenue attributable to such activities relating to the  
3 project from sales to consumers who are not related persons and are  
4 located outside the state;

5           ~~(f)~~ (g) The sale of software development services,  
6 computer systems design, product testing services, or guidance or  
7 surveillance systems design services or the licensing of technology  
8 if the taxpayer derives at least seventy-five percent of the sales  
9 or revenue attributable to such activities relating to the project  
10 from sales or licensing either to customers who are not related  
11 persons and located outside the state or to the United States  
12 Government;

13           ~~(g)~~ (h) The research, development, and maintenance of an  
14 Internet web portal. For purposes of this subdivision, Internet web  
15 portal means an Internet site that allows users to access, search,  
16 and navigate the Internet; or

17           ~~(h)~~ (i) Any combination of the activities listed in this  
18 subsection.

19           (2) For a tier 1 project, qualified business means any  
20 business engaged in:

21           (a) The conducting of research, development, or testing  
22 for scientific, agricultural, animal husbandry, food product, or  
23 industrial purposes;

24           (b) The assembly, fabrication, manufacture, or processing  
25 of tangible personal property;

1           (c) The sale of software development services, computer  
2 systems design, product testing services, or guidance or  
3 surveillance systems design services or the licensing of technology  
4 if the taxpayer derives at least seventy-five percent of the sales  
5 or revenue attributable to such activities relating to the project  
6 from sales or licensing either to customers who are not related  
7 persons and are located outside the state or to the United States  
8 Government; or

9           (d) Any combination of activities listed in this  
10 subsection.

11           (3) For a tier 6 project, qualified business means any  
12 business except a business excluded by subsection (4) of this  
13 section.

14           (4) ~~Qualified~~ Except for business activity described in  
15 subdivision (1)(f) of this section, qualified business does not  
16 include any business activity in which eighty percent or more of  
17 the total sales are sales to the ultimate consumer of (a) food  
18 prepared for immediate consumption or ~~are sales to the ultimate~~  
19 ~~consumer of~~ (b) tangible personal property which is not assembled,  
20 fabricated, manufactured, or processed by the taxpayer or used by  
21 the purchaser in any of the activities listed in subsection (1) or  
22 (2) of this section.

23           Sec. 5. Section 77-5723, Revised Statutes Cumulative  
24 Supplement, 2008, is amended to read:

25           77-5723 (1) In order to utilize the incentives set

1 forth in the Nebraska Advantage Act, the taxpayer shall file  
2 an application, on a form developed by the Tax Commissioner,  
3 requesting an agreement with the Tax Commissioner.

4 (2) The application shall contain:

5 (a) A written statement describing the plan of employment  
6 and investment for a qualified business in this state;

7 (b) Sufficient documents, plans, and specifications as  
8 required by the Tax Commissioner to support the plan and to define  
9 a project;

10 (c) If more than one location within this state is  
11 involved, sufficient documentation to show that the employment and  
12 investment at different locations are interdependent parts of the  
13 plan. A headquarters shall be presumed to be interdependent with  
14 each other location directly controlled by such headquarters. A  
15 showing that the parts of the plan would be considered parts of  
16 a unitary business for corporate income tax purposes shall not  
17 be sufficient to show interdependence for the purposes of this  
18 subdivision;

19 (d) A nonrefundable application fee of one thousand  
20 dollars for a tier 1 project, two thousand five hundred dollars for  
21 a tier 2, tier 3, or tier 5 project, five thousand dollars for a  
22 tier 4 project, and ten thousand dollars for a tier 6 project. The  
23 fee shall be credited to the Nebraska Incentives Fund; and

24 (e) A timetable showing the expected sales tax refunds  
25 and what year they are expected to be claimed. The timetable shall

1 include both direct refunds due to investment and credits taken as  
2 sales tax refunds as accurately as possible.

3           The application and all supporting information shall be  
4 confidential except for the name of the taxpayer, the location of  
5 the project, the amounts of increased employment and investment,  
6 and the information required to be reported by sections 77-5731 and  
7 77-5734.

8           (3) An application must be complete to establish the date  
9 of the application. An application shall be considered complete  
10 once it contains the items listed in subsection (2) of this  
11 section, regardless of the Tax Commissioner's additional needs  
12 pertaining to information or clarification in order to approve or  
13 not approve the application.

14           (4) Once satisfied that the plan in the application  
15 defines a project consistent with the purposes stated in the  
16 Nebraska Advantage Act in one or more qualified business activities  
17 within this state, that the taxpayer and the plan will qualify for  
18 benefits under the act, and that the required levels of employment  
19 and investment for the project will be met prior to the end of the  
20 fourth year after the year in which the application was submitted  
21 for a tier 1, tier 3, or tier 6 project or the end of the sixth  
22 year after the year in which the application was submitted for  
23 a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall  
24 approve the application.

25           (5) After approval, the taxpayer and the Tax Commissioner

1 shall enter into a written agreement. The taxpayer shall agree  
2 to complete the project, and the Tax Commissioner, on behalf of  
3 the State of Nebraska, shall designate the approved plan of the  
4 taxpayer as a project and, in consideration of the taxpayer's  
5 agreement, agree to allow the taxpayer to use the incentives  
6 contained in the Nebraska Advantage Act. The application, and  
7 all supporting documentation, to the extent approved, shall be  
8 considered a part of the agreement. The agreement shall state:

9 (a) The levels of employment and investment required by  
10 the act for the project;

11 (b) The time period under the act in which the required  
12 levels must be met;

13 (c) The documentation the taxpayer will need to supply  
14 when claiming an incentive under the act;

15 (d) The date the application was filed; and

16 (e) A requirement that the company update the Department  
17 of Revenue annually on any changes in plans or circumstances which  
18 affect the timetable of sales tax refunds as set out in the  
19 application. If the company fails to comply with this requirement,  
20 the Tax Commissioner may defer any pending sales tax refunds until  
21 the company does comply.

22 (6) The incentives contained in section 77-5725 shall be  
23 in lieu of the tax credits allowed by the Nebraska Advantage Rural  
24 Development Act for any project. In computing credits under the  
25 act, any investment or employment which is eligible for benefits

1 or used in determining benefits under the Nebraska Advantage Act  
2 shall be subtracted from the increases computed for determining  
3 the credits under section 77-27,188. New investment or employment  
4 at a project location that results in the meeting or maintenance  
5 of the employment or investment requirements, the creation of  
6 credits, or refunds of taxes under the Employment and Investment  
7 Growth Act shall not be considered new investment or employment  
8 for purposes of the Nebraska Advantage Act. The use of carryover  
9 credits under the Employment and Investment Growth Act, the Invest  
10 Nebraska Act, the Nebraska Advantage Rural Development Act, or the  
11 Quality Jobs Act shall not preclude investment and employment from  
12 being considered new investment or employment under the Nebraska  
13 Advantage Act. The use of property tax exemptions at the project  
14 under the Employment and Investment Growth Act shall not preclude  
15 investment not eligible for the property tax exemption from being  
16 considered new investment under the Nebraska Advantage Act.

17 (7) A taxpayer and the Tax Commissioner may enter into  
18 agreements for more than one project and may include more than  
19 one project in a single agreement. The projects may be either  
20 sequential or concurrent. A project may involve the same location  
21 as another project. No new employment or new investment shall be  
22 included in more than one project for either the meeting of the  
23 employment or investment requirements or the creation of credits.  
24 When projects overlap and the plans do not clearly specify, then  
25 the taxpayer shall specify in which project the employment or

1 investment belongs.

2 (8) The taxpayer may request that an agreement be  
3 modified if the modification is consistent with the purposes  
4 of the act and does not require a change in the description of  
5 the project. An agreement may not be modified to a tier that  
6 would grant a higher level of benefits to the taxpayer or to  
7 a tier 1 project. Once satisfied that the modification to the  
8 agreement is consistent with the purposes stated in the act, the  
9 Tax Commissioner and taxpayer may amend the agreement. For a tier 6  
10 project, the taxpayer must agree to limit the project to qualified  
11 activities allowable under tier 2 and tier 4.

12 Sec. 6. Section 77-5725, Revised Statutes Cumulative  
13 Supplement, 2008, is amended to read:

14 77-5725 (1) Applicants may qualify for benefits under the  
15 Nebraska Advantage Act in one of six tiers:

16 (a) Tier 1, investment in qualified property of at least  
17 one million dollars and the hiring of at least ten new employees.  
18 ~~There shall be no new project applications for benefits under~~  
19 ~~this tier filed on or after January 1, 2011, without further~~  
20 ~~authorization of the Legislature.~~ All complete project applications  
21 ~~filed before January 1, 2011,~~ shall be considered by the Tax  
22 Commissioner and approved if the project and taxpayer qualify  
23 for benefits. Agreements may be executed with regard to completed  
24 project applications; ~~filed before January 1, 2011.~~ All project  
25 ~~agreements pending, approved, or entered into before such date~~

1 ~~shall continue in full force and effect;~~

2 (b) Tier 2, investment in qualified property of at least  
3 three million dollars and the hiring of at least thirty new  
4 employees;

5 (c) Tier 3, the hiring of at least thirty new employees.  
6 ~~There shall be no new project applications for benefits under~~  
7 ~~this tier filed on or after January 1, 2011, without further~~  
8 ~~authorization of the Legislature.~~ All complete project applications  
9 filed before January 1, 2011, shall be considered by the Tax  
10 Commissioner and approved if the project and taxpayer qualify  
11 for benefits. Agreements may be executed with regard to completed  
12 project applications, i filed before January 1, 2011. All project  
13 agreements pending, approved, or entered into before such date  
14 shall continue in full force and effect;

15 (d) Tier 4, investment in qualified property of at least  
16 ten million dollars and the hiring of at least one hundred new  
17 employees;

18 (e) Tier 5, investment in qualified property of at least  
19 thirty million dollars. Failure to maintain an average number of  
20 equivalent employees as defined in section 77-5727 greater than or  
21 equal to the number of equivalent employees in the base year shall  
22 result in a partial recapture of benefits; and

23 (f) Tier 6, investment in qualified property of at least  
24 ten million dollars and the hiring of at least seventy-five new  
25 employees or the investment in qualified property of at least

1 one hundred million dollars and the hiring of at least fifty new  
2 employees. Agreements may be executed with regard to completed  
3 project applications filed before January 1, 2016. All project  
4 agreements pending, approved, or entered into before such date  
5 shall continue in full force and effect.

6 (2) When the taxpayer has met the required levels of  
7 employment and investment contained in the agreement for a tier 1,  
8 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be  
9 entitled to the following incentives:

10 (a) A refund of all sales and use taxes for a tier 2,  
11 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
12 sales and use taxes for a tier 1 project paid under the Local  
13 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections  
14 13-319, 13-324, and 13-2813 from the date of the application  
15 through the meeting of the required levels of employment and  
16 investment for all purchases, including rentals, of:

17 (i) Qualified property used as a part of the project;

18 (ii) Property, excluding motor vehicles, based in this  
19 state and used in both this state and another state in connection  
20 with the project except when any such property is to be used for  
21 fundraising for or for the transportation of an elected official;

22 (iii) Tangible personal property by the owner of the  
23 improvement to real estate that is incorporated into real estate as  
24 a part of a project; and

25 (iv) Tangible personal property by a contractor or

1 repairperson after appointment as a purchasing agent of the owner  
2 of the improvement to real estate. The refund shall be based on  
3 fifty percent of the contract price, excluding any land, as the  
4 cost of materials subject to the sales and use tax; and

5 (b) A refund of all sales and use taxes for a tier 2,  
6 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
7 sales and use taxes for a tier 1 project paid under the Local  
8 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections  
9 13-319, 13-324, and 13-2813 on the types of purchases, including  
10 rentals, listed in subdivision (a) of this subsection for such  
11 taxes paid during each year of the entitlement period in which  
12 the taxpayer is at or above the required levels of employment and  
13 investment.

14 (3) Any taxpayer who qualifies for a tier 1, tier 2,  
15 tier 3, or tier 4 project shall be entitled to a credit equal to  
16 three percent times the average wage of new employees times the  
17 number of new employees if the average wage of the new employees  
18 equals at least sixty percent of the Nebraska average annual wage  
19 for the year of application. The credit shall equal four percent  
20 times the average wage of new employees times the number of new  
21 employees if the average wage of the new employees equals at least  
22 seventy-five percent of the Nebraska average annual wage for the  
23 year of application. The credit shall equal five percent times the  
24 average wage of new employees times the number of new employees  
25 if the average wage of the new employees equals at least one

1 hundred percent of the Nebraska average annual wage for the year of  
2 application. The credit shall equal six percent times the average  
3 wage of new employees times the number of new employees if the  
4 average wage of the new employees equals at least one hundred  
5 twenty-five percent of the Nebraska average annual wage for the  
6 year of application. For computation of such credit:

7 (a) Average annual wage means the total compensation paid  
8 to employees during the year at the project who are not base-year  
9 employees and who are paid wages equal to at least sixty percent  
10 of the Nebraska average weekly wage for the year of application,  
11 excluding any compensation in excess of one million dollars paid  
12 to any one employee during the year, divided by the number of  
13 equivalent employees making up such total compensation;

14 (b) Average wage of new employees means the average  
15 annual wage paid to employees during the year at the project who  
16 are not base-year employees and who are paid wages equal to at  
17 least sixty percent of the Nebraska average weekly wage for the  
18 year of application, excluding any compensation in excess of one  
19 million dollars paid to any one employee during the year; and

20 (c) Nebraska average annual wage means the Nebraska  
21 average weekly wage times fifty-two.

22 (4) Any taxpayer who qualifies for a tier 6 project shall  
23 be entitled to a credit equal to ten percent times the total  
24 compensation paid to all employees, other than base-year employees,  
25 excluding any compensation in excess of one million dollars paid to

1 any one employee during the year, employed at the project.

2 (5) Any taxpayer who has met the required levels of  
3 employment and investment for a tier 2 or tier 4 project shall  
4 receive a credit equal to ten percent of the investment made in  
5 qualified property at the project. Any taxpayer who has met the  
6 required levels of investment and employment for a tier 1 project  
7 shall receive a credit equal to three percent of the investment  
8 made in qualified property at the project. Any taxpayer who has  
9 met the required levels of investment and employment for a tier  
10 6 project shall receive a credit equal to fifteen percent of the  
11 investment made in qualified property at the project.

12 (6) The credits prescribed in subsections (3), (4), and  
13 (5) of this section shall be allowable for compensation paid and  
14 investments made during each year of the entitlement period that  
15 the taxpayer is at or above the required levels of employment and  
16 investment.

17 (7) The credit prescribed in subsection (5) of this  
18 section shall also be allowable during the first year of the  
19 entitlement period for investment in qualified property at the  
20 project after the date of the application and before the required  
21 levels of employment and investment were met.

22 (8)(a) A taxpayer who has met the required levels of  
23 employment and investment for a tier 4 or tier 6 project shall  
24 receive the incentive provided in this subsection. A taxpayer who  
25 has a project for an Internet web portal and who has met the

1 required level of investment for a tier 5 project shall receive the  
2 incentive provided in this subsection for property in subdivision  
3 (8)(b)(ii) of this section. Such investment and hiring of new  
4 employees shall be considered a required level of investment and  
5 employment for this subsection and for the recapture of benefits  
6 under this subsection only.

7 (b) The following property used in connection with such  
8 project or projects and acquired by the taxpayer, whether by  
9 lease or purchase, after the date the application was filed shall  
10 constitute separate classes of personal property:

11 (i) Turbine-powered aircraft, including turboprop,  
12 turbojet, and turbofan aircraft, except when any such aircraft is  
13 used for fundraising for or for the transportation of an elected  
14 official;

15 (ii) Computer systems, made up of equipment that is  
16 interconnected in order to enable the acquisition, storage,  
17 manipulation, management, movement, control, display, transmission,  
18 or reception of data involving computer software and hardware, used  
19 for business information processing which require environmental  
20 controls of temperature and power and which are capable of  
21 simultaneously supporting more than one transaction and more than  
22 one user. A computer system includes peripheral components which  
23 require environmental controls of temperature and power connected  
24 to such computer systems. Peripheral components shall be limited to  
25 additional memory units, tape drives, disk drives, power supplies,

1 cooling units, data switches, and communication controllers;

2 (iii) Depreciable personal property used for a  
3 distribution facility, including, but not limited to, storage  
4 racks, conveyor mechanisms, forklifts, and other property used to  
5 store or move products;

6 (iv) Personal property which is business equipment  
7 located in a single project if the business equipment is involved  
8 directly in the manufacture or processing of agricultural products;  
9 and

10 (v) For a tier 6 project, any other personal property  
11 located at the project.

12 (c) Such property shall be eligible for exemption from  
13 the tax on personal property from the first January 1 following  
14 the date of acquisition for property in subdivision (8)(b)(i)  
15 of this section, or from the first January 1 following the end  
16 of the year during which the required levels were exceeded for  
17 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this  
18 section, through the ninth December 31 after the first year any  
19 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)  
20 of this section qualifies for the exemption. In order to receive  
21 the property tax exemptions allowed by subdivision (8)(b) of this  
22 section, the taxpayer shall annually file a claim for exemption  
23 with the Tax Commissioner on or before May 1. The form and  
24 supporting schedules shall be prescribed by the Tax Commissioner  
25 and shall list all property for which exemption is being sought

1 under this section. A separate claim for exemption must be filed  
2 for each project and each county in which property is claimed  
3 to be exempt. A copy of this form must also be filed with the  
4 county assessor in each county in which the applicant is requesting  
5 exemption. The Tax Commissioner shall determine the eligibility  
6 of each item listed for exemption and, on or before August 1,  
7 certify such to the taxpayer and to the affected county assessor.  
8 In determining the eligibility of items of personal property for  
9 exemption, the Tax Commissioner is limited to the question of  
10 whether the property claimed as exempt by the taxpayer falls  
11 within the classes of property described in subdivision (8)(b) of  
12 this section. The determination of whether a taxpayer is eligible  
13 to obtain exemption for personal property based on meeting the  
14 required levels of investment and employment is the responsibility  
15 of the Tax Commissioner.

16 ~~(9)~~ (9)(a) The investment thresholds in this section for  
17 a particular year of application shall be adjusted by the method  
18 provided in this subsection.

19 (b) For tier 1, tier 2, tier 4, and tier 5, beginning  
20 ~~Beginning~~ October 1, 2006, and each October 1 thereafter, the  
21 average Producer Price Index for all commodities, published by  
22 the United States Department of Labor, Bureau of Labor Statistics,  
23 for the most recent available period twelve available periods  
24 shall be divided by the Producer Price Index for the first  
25 quarter of 2006 and the result multiplied by the applicable

1 investment threshold. The investment thresholds shall be adjusted  
2 for cumulative inflation since 2006.

3 (b) For tier 6, beginning October 1, 2008, and each  
4 October 1 thereafter, the average Producer Price Index for all  
5 commodities, published by the United States Department of Labor,  
6 Bureau of Labor Statistics, for the most recent twelve available  
7 periods shall be divided by the Producer Price Index for the  
8 first quarter of 2008 and the result multiplied by the applicable  
9 investment threshold. The investment thresholds shall be adjusted  
10 for cumulative inflation since 2008.

11 (c) If the resulting amount is not a multiple of one  
12 million dollars, the amount shall be rounded to the next lowest one  
13 million dollars.

14 (d) The investment thresholds established by this  
15 subsection apply for purposes of project qualifications for all  
16 applications filed on or after January 1 of the following year for  
17 all years of the project. Adjustments do not apply to projects  
18 after the year of application.

19 Sec. 7. Section 77-5726, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21 77-5726 (1) (a) The credits prescribed in section 77-5725  
22 shall be established by filing the forms required by the Tax  
23 Commissioner with the income tax return for the year. The credits  
24 may be used and shall be applied in the order in which they  
25 were first allowed. The credits may be used after any other

1 nonrefundable credits to reduce the taxpayer's income tax liability  
2 imposed by sections 77-2714 to 77-27,135. Any decision on how part  
3 of the credit is applied shall not limit how the remaining credit  
4 could be applied under this section.

5 (b) The taxpayer may use the credit provided in  
6 ~~subsections (3) and (4)~~ subsection (3) of section 77-5725 to  
7 reduce the taxpayer's income tax withholding employer or payor  
8 tax liability under section 77-2756 or 77-2757 to the extent  
9 such liability is attributable to the number of new employees at  
10 the project, excluding any compensation in excess of one million  
11 dollars paid to any one employee during the year. The taxpayer  
12 may use the credit provided in subsection (4) of section 77-5725  
13 to reduce the taxpayer's income tax withholding employer or payor  
14 tax liability under section 77-2756 or 77-2757 to the extent such  
15 liability is attributable to all employees employed at the project,  
16 other than base-year employees and excluding any compensation in  
17 excess of one million dollars paid to any one employee during the  
18 year. To the extent of the credit used, such withholding shall  
19 not constitute public funds or state tax revenue and shall not  
20 constitute a trust fund or be owned by the state. The use by the  
21 taxpayer of the credit shall not change the amount that otherwise  
22 would be reported by the taxpayer to the employee under section  
23 77-2754 as income tax withheld and shall not reduce the amount that  
24 otherwise would be allowed by the state as a refundable credit  
25 on an employee's income tax return as income tax withheld under

1 section 77-2755.

2 ~~The~~ For a tier 1, tier 2, tier 3, or tier 4 project,  
3 the amount of credits used against income tax withholding shall not  
4 exceed the withholding attributable to new employees employed at  
5 the project, excluding any compensation in excess of one million  
6 dollars paid to any one employee during the year.

7 For a tier 6 project, the amount of credits used  
8 against income tax withholding shall not exceed the withholding  
9 attributable to all employees employed at the project, other than  
10 base-year employees and excluding any compensation in excess of one  
11 million dollars paid to any one employee during the year.

12 If the amount of credit used by the taxpayer against  
13 income tax withholding exceeds this amount, the excess withholding  
14 shall be returned to the Department of Revenue in the manner  
15 provided in section 77-2756, such excess amount returned shall be  
16 considered unused, and the amount of unused credits may be used  
17 as otherwise permitted in this section or shall carry over to the  
18 extent authorized in subdivision (1)(d) of this section.

19 (c) Credits may be used to obtain a refund of sales and  
20 use taxes under the Local Option Revenue Act, the Nebraska Revenue  
21 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not  
22 otherwise refundable that are paid on purchases, including rentals,  
23 for use at the project for a tier 1, tier 2, tier 3, or tier 4  
24 project or for use within this state for a tier 6 project.

25 (d) The credits earned for a tier 6 project may be used

1 to obtain a payment from the state equal to the real property  
2 taxes due after the year the required levels of employment and  
3 investment were met and before the end of the carryover period,  
4 for real property that is included in such project and acquired  
5 by the taxpayer, whether by lease or purchase, after the date the  
6 application was filed. The payment from the state shall be made  
7 only after payment of the real property taxes have been made to the  
8 county as required by law. Payments shall not be allowed for any  
9 taxes paid on real property for which the taxes are divided under  
10 section 18-2147 or 58-507.

11 (e) Credits may be carried over until fully utilized,  
12 except that such credits may not be carried over more than nine  
13 years after the year of application for a tier 1 or tier 3 project,  
14 fourteen years after the year of application for a tier 2 or tier  
15 4 project, or more than one year past the end of the entitlement  
16 period for a tier 6 project.

17 (2)(a) No refund claims shall be filed until after the  
18 required levels of employment and investment have been met.

19 (b) Refund claims shall be filed no more than once each  
20 quarter for refunds under the Nebraska Advantage Act, except that  
21 any claim for a refund in excess of twenty-five thousand dollars  
22 may be filed at any time.

23 (c) Any refund claim for sales and use taxes on materials  
24 incorporated into real estate as a part of the project shall be  
25 filed by and the refund paid to the owner of the improvement

1 to real estate. A refund claim for such materials purchased  
2 by a purchasing agent shall include a copy of the purchasing  
3 agent appointment, the contract price, and a certification by  
4 the contractor or repairperson of the percentage of the materials  
5 incorporated into the project on which sales and use taxes were  
6 paid to Nebraska after appointment as purchasing agent.

7 (d) All refund claims shall be filed, processed, and  
8 allowed as any other claim under section 77-2708, except that  
9 the amounts allowed to be refunded under the Nebraska Advantage  
10 Act shall be deemed to be overpayments and shall be refunded  
11 notwithstanding any limitation in subdivision (2)(a) of section  
12 77-2708. The refund may be allowed if the claim is filed within  
13 three calendar years from the end of the year the required levels  
14 of employment and investment are met or within the period set forth  
15 in section 77-2708.

16 (e) If a claim for a refund of sales and use taxes  
17 under the Local Option Revenue Act or sections 13-319, 13-324, and  
18 13-2813 of more than twenty-five thousand dollars is filed by June  
19 15 of a given year, the refund shall be made on or after November  
20 15 of the same year. If such a claim is filed on or after June  
21 16 of a given year, the refund shall not be made until on or  
22 after November 15 of the following year. The Tax Commissioner shall  
23 notify the affected city, village, county, or municipal county of  
24 the amount of refund claims of sales and use taxes under the Local  
25 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are

1 in excess of twenty-five thousand dollars on or before July 1 of  
2 the year before the claims will be paid under this section.

3 (f) Interest shall not be allowed on any taxes refunded  
4 under the Nebraska Advantage Act.

5 (3) The appointment of purchasing agents shall be  
6 recognized for the purpose of changing the status of a contractor  
7 or repairperson as the ultimate consumer of tangible personal  
8 property purchased after the date of the appointment which is  
9 physically incorporated into the project and becomes the property  
10 of the owner of the improvement to real estate. The purchasing  
11 agent shall be jointly liable for the payment of the sales and use  
12 tax on the purchases with the owner of the improvement to real  
13 estate.

14 (4) A determination that a taxpayer is not engaged in a  
15 qualified business or has failed to meet or maintain the required  
16 levels of employment or investment for incentives, exemptions, or  
17 recapture may be protested within sixty days after the mailing of  
18 the written notice of the proposed determination. If the notice  
19 of proposed determination is not protested within the sixty-day  
20 period, the proposed determination is a final determination. If the  
21 notice is protested, the Tax Commissioner shall issue a written  
22 order resolving such protests. The written order of the Tax  
23 Commissioner resolving a protest may be appealed to the district  
24 court of Lancaster County within thirty days after the issuance of  
25 the order.

1           Sec. 8. Section 77-5727, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           77-5727 (1)(a) If the taxpayer fails either to meet the  
4 required levels of employment or investment for the applicable  
5 project by the end of the fourth year after the end of the year  
6 the application was submitted for a tier 1, tier 3, or tier 6  
7 project or by the end of the sixth year after the end of the  
8 year the application was submitted for a tier 2, tier 4, or tier  
9 5 project or to utilize such project in a qualified business at  
10 employment and investment levels at or above those required in the  
11 agreement for the entire entitlement period, all or a portion of  
12 the incentives set forth in the Nebraska Advantage Act shall be  
13 recaptured or disallowed.

14           (b) In the case of a taxpayer who has failed to meet  
15 the required levels of investment or employment within the required  
16 time period, all reduction in the personal property tax because of  
17 the act shall be recaptured.

18           (2) In the case of a taxpayer who has failed to maintain  
19 the project at the required levels of employment or investment  
20 for the entire entitlement period, any reduction in the personal  
21 property tax, any refunds in tax allowed under subsection (2)  
22 of section 77-5725, and any refunds or reduction in tax allowed  
23 because of the use of a credit allowed under section 77-5725 shall  
24 be partially recaptured from either the taxpayer or the owner of  
25 the improvement to real estate and any carryovers of credits shall

1 be partially disallowed. ~~One-seventh of the refunds, one-seventh~~  
2 ~~of the reduction in personal property tax, and one-seventh of~~  
3 ~~the credits used shall be recaptured and one-seventh of the~~  
4 ~~remaining carryovers and~~ The amount of the recapture shall be  
5 a percentage equal to the number of years the taxpayer did not  
6 maintain the project at or above the required levels of investment  
7 and employment divided by the number of years of the project's  
8 entitlement period multiplied by the refunds allowed, reduction  
9 in personal property tax, the credits used, and the remaining  
10 carryovers. In addition, the last remaining year of personal  
11 property tax exemption shall be disallowed for each year the  
12 taxpayer did not maintain such project at or above the required  
13 levels of employment or investment.

14 (3) In the case of a taxpayer qualified under tier 5 who  
15 has failed to maintain the average number of equivalent employees  
16 at the project at the end of the six years following the year the  
17 taxpayer attained the required amount of investment, any refunds  
18 in tax allowed under ~~subdivision (2)(a)~~ subsection (2) of section  
19 77-5725 or any reduction in the personal property tax under section  
20 77-5725 shall be partially recaptured from the taxpayer. The amount  
21 of recapture shall be the total amount of refunds and reductions in  
22 tax allowed for all years times the reduction in the average number  
23 of equivalent employees employed at the end of the entitlement  
24 period from the number of equivalent employees employed in the  
25 base year divided by the number of equivalent employees employed

1 in the base year. For purposes of this subsection, the average  
2 number of equivalent employees shall be calculated at the end of  
3 the entitlement period by adding the number of equivalent employees  
4 in the year the taxpayer attains the required level of investment  
5 and each of the next following six years and dividing the result by  
6 seven.

7 (4) If the taxpayer receives any refunds or reduction  
8 in tax to which the taxpayer was not entitled or which were in  
9 excess of the amount to which the taxpayer was entitled, the refund  
10 or reduction in tax shall be recaptured separate from any other  
11 recapture otherwise required by this section. Any amount recaptured  
12 under this subsection shall be excluded from the amounts subject to  
13 recapture under other subsections of this section.

14 (5) Any refunds or reduction in tax due, to the extent  
15 required to be recaptured, shall be deemed to be an underpayment of  
16 the tax and shall be immediately due and payable. When tax benefits  
17 were received in more than one year, the tax benefits received  
18 in the most recent year shall be recovered first and then the  
19 benefits received in earlier years up to the extent of the required  
20 recapture.

21 (6) Any personal property tax that would have been due  
22 except for the exemption allowed under the Nebraska Advantage  
23 Act, to the extent it becomes due under this section, shall be  
24 considered delinquent and shall be immediately due and payable to  
25 the county or counties in which the property was located when

1 exempted. All amounts received by a county under this section shall  
2 be allocated to each taxing unit levying taxes on tangible personal  
3 property in the county in the same proportion that the levy on  
4 tangible personal property of such taxing unit bears to the total  
5 levy of all of such taxing units.

6 (7) Notwithstanding any other limitations contained in  
7 the laws of this state, collection of any taxes deemed to be  
8 underpayments by this section shall be allowed for a period of  
9 three years after the end of the entitlement period.

10 (8) Any amounts due under this section shall be  
11 recaptured notwithstanding other allowable credits and shall not be  
12 subsequently refunded under any provision of the Nebraska Advantage  
13 Act unless the recapture was in error.

14 (9) The recapture required by this section shall not  
15 occur if the failure to maintain the required levels of employment  
16 or investment was caused by an act of God or national emergency.

17 Sec. 9. Section 77-5804, Revised Statutes Cumulative  
18 Supplement, 2008, is amended to read:

19 77-5804 (1) The credit allowed under section 77-5803 may  
20 be used to obtain a refund of state sales and use taxes paid, may  
21 be used against the income tax liability of the taxpayer, or may be  
22 used as a refundable credit claimed on an income tax return of the  
23 taxpayer. The return need not reflect any income tax liability owed  
24 by the taxpayer.

25 (2) A claim for the credit may be filed quarterly for

1 refund of the state sales and use taxes paid, either directly or  
2 indirectly, after the filing of the income tax return for the tax  
3 year in which the credit was first allowed.

4 (3) The credit may be used to obtain a refund of state  
5 sales and use taxes paid before the end of the tax year for which  
6 the credit was allowed, except that the amount refunded under this  
7 subsection shall not exceed the amount of the state sales and use  
8 taxes paid, either directly or indirectly, by the taxpayer on the  
9 qualifying expenditures.

10 (4) Credits distributed to a partner, limited liability  
11 company member, shareholder, or beneficiary may be used against  
12 the income tax liability of the partner, member, shareholder, or  
13 beneficiary receiving the credits.

14 (5) Interest shall not be allowed on any taxes refunded  
15 under the Nebraska Advantage Research and Development Act.

16 Sec. 10. Section 77-5806, Revised Statutes Cumulative  
17 Supplement, 2008, is amended to read:

18 77-5806 The Nebraska Advantage Research and Development  
19 Act shall be operative for all tax years beginning or deemed to  
20 begin on or after January 1, 2006, under the Internal Revenue Code  
21 of 1986, as amended. ~~No business firm shall be allowed to first~~  
22 ~~claim the credit for any tax year beginning or deemed to begin on~~  
23 ~~or after January 1, 2011, under the Internal Revenue Code of 1986,~~  
24 ~~as amended.~~

25 Sec. 11. Section 77-5905, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2           77-5905 (1) If the Department of Revenue determines  
3 that an application meets the requirements of section 77-5904 and  
4 that the investment or employment is eligible for the credit and  
5 (a) the applicant is actively engaged in the operation of the  
6 microbusiness or will be actively engaged in the operation upon its  
7 establishment, (b) the majority of the assets of the microbusiness  
8 are located in a distressed area or will be upon its establishment,  
9 (c) the applicant will make new investment or employment in the  
10 microbusiness, and (d) the new investment or employment will create  
11 new income or jobs in the distressed area, the department shall  
12 approve the application and authorize tentative tax credits to the  
13 applicant within the limits set forth in this section and certify  
14 the amount of tentative tax credits approved for the applicant.  
15 Applications for tax credits shall be considered in the order in  
16 which they are received.

17           (2) The department may approve applications up to the  
18 adjusted limit for each calendar year beginning January 1, 2006,  
19 ~~7 through December 31, 2010.~~ After applications totaling the  
20 adjusted limit have been approved for a calendar year, no further  
21 applications shall be approved for that year. The adjusted limit  
22 in a given year is two million dollars plus tentative tax credits  
23 that were not granted by the end of the preceding year. Tax credits  
24 shall not be allowed for a taxpayer receiving benefits under the  
25 Employment and Investment Growth Act, the Nebraska Advantage Act,

1 or the Nebraska Advantage Rural Development Act.

2           Sec. 12. Section 77-5906, Revised Statutes Cumulative  
3 Supplement, 2008, is amended to read:

4           77-5906 Taxpayers shall be entitled to refundable tax  
5 credits equal to twenty percent of the taxpayer's new investment or  
6 employment in the microbusiness during the tax year not to exceed  
7 the amount of tentative tax credits approved by the department  
8 under section 77-5905. The taxpayer shall claim the tax credit  
9 by filing a form developed by the Tax Commissioner and attaching  
10 the tentative tax credit certification granted by the department.  
11 Tentative tax credits expire after the end of the tax year  
12 following the year the tentative tax credit was certified. The  
13 total lifetime tax credits claimed by any one taxpayer and any  
14 related person under the Nebraska Advantage Microenterprise Tax  
15 Credit Act shall be limited to ten thousand dollars. Interest shall  
16 not be allowed on any taxes refunded under the act.

17           Sec. 13. Section 81-12,125, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           81-12,125 Sections 81-12,125 to 81-12,127 shall be known  
20 and may be cited as the Building Entrepreneurial Communities Act.  
21 The act terminates on January 1, ~~2011.~~ 2015.

22           Sec. 14. Sections 6, 7, and 15 of this act become  
23 operative on January 1, 2009. The other sections of this act become  
24 operative on their effective date.

25           Sec. 15. Original sections 77-5725 and 77-5726, Revised

1 Statutes Cumulative Supplement, 2008, are repealed.

2           Sec. 16. Original sections 2-5413 and 81-12,125, Reissue  
3 Revised Statutes of Nebraska, and sections 77-27,187.02, 77-5714,  
4 77-5715, 77-5723, 77-5727, 77-5804, 77-5806, 77-5905, and 77-5906,  
5 Revised Statutes Cumulative Supplement, 2008, are repealed.